

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

KENNETH L. STOREY,

Plaintiff,

v.

3:97-cv-803

TIM HUTCHISON, et al.,

Defendants.

MEMORANDUM AND ORDER

This is a *pro se* prisoner's civil rights complaint under 42 U.S.C. § 1983, which was dismissed in 2002 for failure to exhaust administrative remedies and the Sixth Circuit affirmed. *Storey v. Hutchinson*, 56 F. App'x 228 (6th Cir. Jan. 24, 2003), *cert. denied*, 540 U.S. 1113 (2004). Plaintiff subsequently filed a motion for relief from judgment, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, in which he alleged fraud on the court on the part of the defendants and their counsel. The court denied the motion and plaintiff filed a notice of appeal. Plaintiff has also filed a motion for leave to appeal *in forma pauperis*.

It appears from the application that the plaintiff lacks sufficient financial resources to pay the \$455.00 filing fee. Accordingly, pursuant to 28 U.S.C. § 1915(b), plaintiff will be allowed to proceed on appeal without the prepayment of costs or fees or security therefor.

Plaintiff is herewith assessed the \$455.00 fee for filing an appeal. Pursuant to 28 U.S.C. § 1915(b)(1)(A) and (B), the custodian of the plaintiff's inmate trust account at the institution where he now resides is directed to submit to the Clerk, U.S. District Court, 800 Market Street, Suite 130, Knoxville, Tennessee 37902, as an initial partial payment, whichever is greater of:

(a) twenty percent (20%) of the average monthly deposits to the plaintiff's inmate trust account; *or*

(b) twenty percent (20%) of the average monthly balance in the plaintiff's inmate trust account for the six-month period preceding the filing of the appeal on October 13, 2011.

Thereafter, the custodian shall submit twenty percent (20%) of the plaintiff's preceding monthly income (or income credited to the plaintiff's trust account for the preceding month), but only when such monthly income exceeds ten dollars (\$10.00), until the full filing fee of Four Hundred Fifty-five Dollars (\$455.00) has been paid to the Clerk. 28 U.S.C. § 1915(b)(2).

The Clerk is **DIRECTED** to send a copy of this Order to the Warden of the Southeastern Regional Correctional Facility, the Commissioner of the Tennessee Department of Correction, and the Attorney General for the State of Tennessee to ensure that the custodian of the plaintiff's inmate trust account complies with that portion of the Prison

Litigation Reform Act relating to payment of the filing fee. The Clerk is further **DIRECTED** to forward a copy of this Order to the court's financial deputy.

ENTER:

s/ Leon Jordan
United States District Judge